VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

David C. Keith
Anchor QEA, LLC
614 Magnolia Avenue
Ocean Springs, MS 39564

RE: EPA ~~Noncompliance with Time Critical Removal Action Work Plan Schedule~~response to respondents' concerns about construction via water access only
Administrative Settlement Agreement and Order on Consent for Removal Action,
CERCLA Docket No. 06-12-10
San Jacinto River Waste Pits Superfund Site near Pasadena, Harris County, Texas

Dear Mr. Keith:

~~By this letter, the Environmental Protection Agency is notifying the Respondents of non-compliance with the Work Plan Schedule for the Administrative Settlement Agreement and Order on Consent for Removal Action (AOC), Docket No. 06-12-10. As of January 5, 2011, Respondents have ceased all work activities at the Site and are in non-compliance with the Work Plan Schedule. In accordance with Section XVIII, Paragraphs 76 and 79, of the AOC, stipulated penalties shall accrue for non-compliance starting on the day the violation occurs until work activities resume as documented by EPA.~~

~~EPA would like to stress that your conduct constitutes a violation of the AOC and that International Paper Company, Inc. & McGinnes Industrial Maintenance Corporation must take immediate actions to ensure compliance with the terms of the AOC. The EPA is enclosing the January 5, 2011 EPA Site Inspection Memo outlining the removal activities that are in non-compliance not being performed in accordance with the AOC schedule that resulted from Respondents cessation of removal activities at the Site. The EPA may determine that your failure to perform the required activities constitutes a continuing event of non-compliance and may subject Respondents to the assessment of penalties by EPA under the terms of the AOC.~~

~~I urge Respondents to resume the Time Critical Removal Action (TCRA) implementation obligations in accordance with the TCRA Work Plan Schedule immediately. If you have any questions concerning this matter, please contact Valmichael Leos at 214-665-2283.~~

Sincerely yours,

Valmichael Leos
Remedial Project Manager

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~~Enclosure~~On November 1, 2010, EPA received a letter from your client which raises concerns about environmental construction on top of the San Jacinto River Waste Pits (Site) waste pits via water access only. Due to your clients lack of having a signed access agreement via land along the Texas Department of Transportation (TxDOT) Right-of-way (ROW) located adjacent to the waste pits you must access the waste pits to conduct work by either water or air. The work on top of the waste pits involves the temporary stabilization of an uncontrolled release of hazardous substances into the environment. The stabilization of the waste pits involves rebuilding the original 1966 earthen berm, which enclosed the paper pulp waste sludge from the San Jacinto River in addition to the placement of a granular cover material of clean fill that will serve to temporarily stabilize the waste from releasing into the environment.

EPA has reviewed your concerns raised in your November 1, 2010 letter and believes that access via water is a viable option that must not be dismissed. In your letter you state three concerns that you believe to be "significant," which would prevent your clients from continuing work. EPA's review of your client's concerns have found no significant issues raised that would prevent the continuation of work on top of the waste pits.

In brief, while EPA agrees that specialized equipment may be needed for the loading and unloading of construction equipment on top of the waste pits during water access, it is the agency's position that this type of activity is not uncommon for a removal action. Furthermore, this type of activity can be done with minimal environmental risk if the appropriate planning and engineering controls are implemented. The EPA also recognizes that any transport via water has some environmental risk associated with the localized resuspension of environmental contaminants, but believes that these short term risks, which are manageable with the appropriate mitigation measures, due not outweigh the long term environmental benefits of stabilizing the ongoing release from the waste pits into the environment.

According to your November 1, 2010 letter your respondents state several concerns which are detailed in the chart below. Below is a detailed response by the EPA on concerns raised about environmental risk, health and safety, and project duration.

Type of Concern:	**Respondents claim**	**EPA response**
Increased environmental risk	The respondents believe that the building of landing platform for equipment (piles and spuds installation / removal, bridge or offshore facility) will spread contaminated sediment.	Long term environmental protection outweighs the short term risks associated with localized resuspension of documented low-level contaminates surrounding the waste pits. The landing platform will also serve a dual purpose; 1) temporary landing for equipment, and 2) cap of granular clean fill over waste pits.

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Increased environmental risk	The RPs believe that the increase movement in waterway with additional boats will spread contamination.	The increased movement in the waterway is minimal and sporadic with the unloading and loading of equipment and materials.
Increased environmental risk	The RPs believe that there is a potential of contaminated sediment resuspension due to the re-grading of fill material for landing platform	EPA anticipates some resuspension of low level contaminats regardless of access via land or via water due to the Eastern Cell of the waste pits currently submerged under 4 foot of water. Environmental monitoring along with engineering controls during construction will minimize any localized resuspension of low level contaminats that have been documented to surround the waste pits. It is EPA's position that each day the site is NOT stabilized, there are high levels (i.e. 360,000 OC Normailized 2,3,7,8-TCDD (ng/kg)) of dioxin / furan waste that continue to be released into the San Jacinto River.
Increased environmental risk	The RPs believe that Section 404 Clean Water Act (CWA) concerns – "placement of additional fill for landing area is in conflict with 404 Applicable or Relevant and Appropriate Requirement (ARAR).	Section 404 of CWA does not prohibit the inaction of a removal action which leads to further releases of hazardous substances into the environment. The long term environmental protection outweighs the short term risks associated with localized resuspension of documented low-level contaminates surrounding the waste pits.
Increased environmental risk	The RPs believe that movement	Movement of water due to

	of water due to increase boat traffic will spread contamination.	increased boat traffic involves concerns with the localized resuspension of low level contaminates surrounding the waste pits. This risk concern can be appropriately addressed with planning and engineering controls. In parallel with this removal action, the EPA is currently conducting a remedial investigation / feasibility study which contributes to a future remedial action for addressing contamination in the area surrounding the waste pits.
Increased health and safety risk	The RPs believe that access via water is inherently more risky	The notion that some additional time spent on boats via water will "inherently" increase injuries, deaths, or accidents is presumptuous and speculative.
Increased health and safety risk	The RPs state that marine access only scenario presents more hazards (i.e. drowning, loss of limb, and / or property) to site personnel	The physical distance to shoreline in the event of emergency is not a significant concern. Time that site personnel will spend in the deep water (i.e. depth greater than 4 feet) is minimal. Deep water travel will be at most ½ to 3 mile distances for the unloading or loading of equipment and materials. Actual work on top of the waste pits will be done on dry land via the central berm.
Increased health and safety risk	The RPs state "Health and safety risks are compounded by the highly variable nature of wind, waves, and currents in the river…"	The water transport of equipment and materials will be sporadic and only done under safe working conditions. Time that site personnel will spend in the deep water (i.e. depth

		greater than 4 feet) is minimal. Deep water travel will be at most ½ to 3 mile distances for the unloading or loading of equipment and materials. Actual work on top of the waste pits will be done on dry land via the central berm.
Increased health and safety risk	The RPs state that the "…there is no reason to contemplate restricting access, or putting workers at undue risk, if there is a better option available"	The EPA has given ample time (over X months) to secure access via land. To date, the respondents do not have a signed access agreement to approach the site via land.
Increased health and safety risk	RPs state that "there is a lack of space above the high water line to store equipment and/or to take shelter in the event of an emergency"	There are a number of nearby by docks (i.e. la barge property) that are located approximately ½ to 3 miles upstream which may be used as an emergency storage area in the event of inclement weather.
Increased health and safety risk	RPs state that sanitation facilities for workers on water would be difficult.	Sanitation facilities would be difficult but not impossible. Time that site personnel will spend in the deep water (i.e. depth greater than 4 feet) is minimal. Deep water travel will be at most ½ to 3 mile distances for the unloading or loading of equipment and materials. Actual work on top of the waste pits will be done on dry land via the central berm.
Increased project duration	RPs state that "significantly more heavy equipment would be needed" thus adding to the project duration for the completion of the removal.	The current EPA approved work schedule with the RPs has opportunities to shorten the overall construction schedule by conducting additional work (i.e. daily work

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		schedule increase from 8 hours to 12 hours, included weekends, or holidays). The current approved schedule has a 5 day a week work schedule which can be modified to offset any additional time added due to water access.

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~~STENGER~~
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